



IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 512.

STANDARD OIL COMPANY (INDIANA), *Petitioner*,

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

PETITION FOR REHEARING.

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Petitioner, Standard Oil Company (Indiana), respectfully prays that the judgment of this Court heretofore entered on December 7, 1942, in the above-entitled cause denying petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit be vacated and that the petition for writ of certiorari as prayed for be granted, for the reasons hereinafter stated:

In this case the Circuit Court (opinion by Evans, J.) decided that any income tax deduction in respect of a payment made to the United States of \$2,906,484.32 in the year 1930 in settlement of an action in trover on account of oil purchased by an affiliate of petitioner from Mammoth Oil Co. and produced by the latter from invalid Teapot Dome leases

should be denied because of public policy. (R. 402.) That considerations of public policy formed the principal basis for the Court's decision has been specifically admitted by respondent. (Resp. Br. 11.) Petitioner requested review of the decision below specifically assigning as a ground for granting the writ the question whether public policy should be extended to prohibiting the income tax deduction claimed. (Pet. Br. 8, et seq.) This Court denied the petition on December 7, 1942.

In the case of *Heininger v. Commissioner*, the same Circuit Court of Appeals was confronted with a demand that public policy be applied to deny income tax deductions to a taxpayer for sums paid in 1937 and 1938 in an unsuccessful defense against issuance of a fraud order by the Postmaster General relating to the taxpayer's business. On February 15, 1943, the Circuit Court (opinion by Minton, J.) specifically held that "public policy" did not operate to prohibit the deduction claimed. (133 F. (2d) 567.)

On May 15, 1943, the Government filed in this Court a petition for writ of certiorari (*Helvering, Com'r v. Heininger*, Docket No. 1027) not only claiming that the decision of the Seventh Circuit Court was in conflict with the decision of the Second Circuit in *National Outdoor Advertising Bureau v. Helvering*, 89 F. (2d) 878, but also specifically claiming that it was contrary to the application of public policy in this taxpayer's case. (See petition in No. 1027, p. 6.)

It is respectfully submitted that the principles of public policy involved in the *Heininger Case* and in the taxpayer's case are substantially the same and that if certiorari is granted in the former case it ought also to be granted in the instant case.

The previous denial of a writ in this case occurred during the present term and the Court therefore has full power to set aside the denial. The provisions of I. R. C. Sec. 1140(c) specifying the date when a Board decision becomes final is subject to the general power of this Court to vacate

its order denying the petition, if such action seems appropriate. In other words, the denial of certiorari does not become final so long as the Court has power to set it aside. *Helvering v. Northern Coal Co.*, 293 U. S. 191, 79 L. ed. 281, holds nothing to the contrary for that was an application for rehearing made more than the fixed statutory period of thirty days after mandate of affirmance had been issued by this Court and this Court simply considered that its power to recall the mandate had been withdrawn upon expiration of the statutory thirty days.

Wherefore it is prayed that this petition be granted and that the petition for writ of certiorari be reconsidered and allowed.

Respectfully submitted,

BUELL F. JONES,
JOHN ENRIETTO,
Counsel for Petitioner.

Of Counsel:

HAMEL, PARK & SAUNDERS,
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